

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DELORIS MCLAUGHLIN

Claimant

VS.

AUTOMOTIVE CONTROLS CORPORATION

Respondent

Self-Insured

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Docket No. 233,793

ORDER

Both claimant and respondent appealed from the preliminary hearing Order of Administrative Law Judge Jon L. Frobish dated October 27, 1998.

ISSUES

- (1) Did claimant provide timely notice as is required by K.S.A. 44-520?
- (2) Did claimant prove she suffered accidental injury arising out of and in the course of her employment with respondent on the dates alleged?
- (3) Is claimant entitled to additional temporary total disability benefits paid from December 15, 1997, through the present?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record, the Appeals Board makes the following findings of fact and conclusions of law:

Claimant alleges accidental injury to her bilateral upper extremities, neck, and back through December 12, 1997, her last day worked. Respondent contends claimant failed to notify respondent in a timely fashion of claimant's injuries and further, that claimant failed to prove that these injuries arose out of and in the course of her employment, but were instead the result of long-standing physical problems suffered by claimant.

K.S.A. 1997 Supp. 44-551 and K.S.A. 1997 Supp. 44-534a specifically set out the rights of the parties with regard to appeals from preliminary hearings. The issues dealing with timely notice and whether claimant suffered accidental injury arising out of and in the course of employment are appealable from preliminary hearings. A dispute regarding claimant's entitlement to additional temporary total disability compensation is not, and claimant's appeal of that issue is dismissed.

With regard to whether claimant provided timely notice, claimant testified that she told her group leader, Bill Cotton, and also her supervisor, David Blex, of her ongoing symptoms. However, neither Mr. Cotton nor Mr. Blex testified in this matter. Mr. Blex did submit an affidavit wherein he denies being advised by claimant of the work-related nature of her injuries with respondent. Mr. Blex acknowledged that claimant filled out an accident report on her last day with respondent but he alleged she failed to indicate that it was work related.

Respondent did present the testimony of Carolyn Leiker, the plant nurse, and Barbara Logan, the Safety and Loss Control Coordinator, who handled the workers compensation claims. Both denied being told by claimant of a work-related injury until May 8, 1998.

The Appeals Board notes that the Administrative Law Judge had the opportunity to view the testimony of claimant, Ms. Leiker, and Ms. Logan in person. The Appeals Board has in the past given some deference to the Administrative Law Judge's ability to assess the credibility of live witness testimony. The Administrative Law Judge, after witnessing the testimony of all three, found claimant to be the more credible witness. In addition, the two persons claimant alleges to have notified, Mr. Cotton and Mr. Blex, did not testify. While Mr. Blex did file an affidavit, the Appeals Board finds the testimony of claimant to be more credible and entitled to greater weight. Therefore, the Appeals Board finds claimant did notify respondent in a timely fashion of the injuries alleged.

Respondent further alleges claimant failed to prove accidental injury arising out of and in the course of her employment. However, the Appeals Board finds claimant's multiple upper extremity problems, including carpal tunnel syndrome, degenerative disc disease in her low back, and other difficulties in her upper extremities, were aggravated by claimant's job. Terrance C. Tisdale, M.D., a board-certified orthopedic surgeon, noted an exacerbation or aggravation of these conditions by claimant's job.

Finally, the Appeals Board finds that claimant's testimony regarding the reported threats made to her by Mr. Cotton, that if she reported the accident she would lose her job, are uncontradicted and are accepted as credible for preliminary hearing purposes.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Jon L. Frobish dated October 27, 1998, should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of December, 1998.

BOARD MEMBER

c: Roger A. Riedmiller, Wichita, KS
Stephen J. Jones, Wichita, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director